In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 205

ROBERT GRENE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a) is reported at 341 F. 2d 916.

JURISDICTION

The judgment of the court of appeals was entered on March 3, 1965. By order of Mr. Justice Black, the time for filing a petition for a writ of certiorari was extended to and including June 1, 1965. The petition for a writ of certiorari was filed on June 1, 1965. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

779-747—65

QUESTIONS PRESENTED

1. Whether the evidence sustained petitioner's conviction.

2. Whether the district court abused its discretion in denying petitioner's request for a continuance.

3. Whether the district court's failure to instruct the jury specifically with regard to the weight to be given to the testimony of an accomplice constituted plain error.

STATUTES INVOLVED

18 U.S.C. 2314 provides in relevant part:

> Whoever transports in interstate or foreign commerce any goods, wares, merchandise, securities or money, of the value of $5,000 or more, knowing the same to have been stolen, converted or taken by fraud; or
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> Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transports or causes to be transported, or induces any person to travel in, or to be transported in interstate commerce in the execution or concealment of a scheme or artifice to defraud that person of money or property having a value of $5,000 or more; or
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> Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce any falsely made, forged, altered, or counterfeited securities or tax stamps, knowing the same to have been falsely made, forged, altered, or counterfeited; * * *
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> * * * * *

Shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

* * * * *

18 U.S.C. 2311 provides in pertinent part:

As used in this chapter:

* * * * *

"Securities" includes any note, stock certificate, bond, debenture, check, draft, warrant, traveler's check, letter of credit, warehouse receipt, negotiable bill of lading, evidence of indebtedness, certificate of interest, or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate; certificate of interest in property, tangible or intangible; instrument or document or writing evidencing ownership of goods, wares, and merchandise, or transferring or assigning any right, title, or interest in or to goods, wares, and merchandise; or, in general, any instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, warrant, or right to subscribe to or purchase any of the foregoing, or any forged, counterfeited, or spurious representation of any of the foregoing;

* * * * *

"Value" means the face, par, or market value, whichever is the greatest, and the aggregate value of all good, wares, and merchandise, securities, and money referred to in a single indictment shall constitute the value thereof.

STATEMENT

After a jury trial in the United States District Court for the Southern District of Florida, petitioner and two co-defendants were convicted of transporting in foreign commerce stolen securities having a value of more than $5,000, and conspiring to commit that offense, in violation of 18 U.S.C. 2314 and 371 (R. 805–810, 825). Petitioner was sentenced to imprisonment for a period of three years on the conspiracy charge and to one year on the substantive charge, the sentences to be served concurrently with each other and with a sentence previously imposed under another indictment (R. 847). The court of appeals affirmed.

Petitioner was indicted on July 3, 1963; he was arraigned and pleaded not guilty on July 10, 1963.[1] At that time, the court set the case for trial on July 22. Petitioner and his co-defendants applied for a continuance, which was denied (R. 816). The trial commenced on July 22, 1963. The evidence may be briefly summarized as follows:

On December 28, 1962, a quantity of money orders (whose serial numbers were shown) issued by the Travelers Express Co. and payable through the Clark State Bank of Clark, New Jersey, were stolen at Jersey City, New Jersey. The money orders were for no specified amount and were blank except for the facsimile signature of two officers of the company (R. 22–47).

[1] An earlier indictment making the same charges had been returned on February 1, 1963, against the two other defendants (Pet. App. 6a).

The principal government witness was Edward Reames, who stated that he was a dealer in foreign real estate. He testified that on January 1 or 2, 1963, petitioner came to his home at Miami Beach, Florida, and introduced defendants Rosa and Napoli (R. 58–60). Rosa said that he and Napoli had a million dollars in "travelers' checks" (as the witness expressed it) which they wanted to invest in Brazilian real estate and uncut diamonds. They assured Reames that the checks were valid and gave him a money order of the Travelers Express Co. for five dollars, which Reames took to a local bank and ascertained to be valid. It was arranged that Reames was to take $200,000 in these checks or money orders to Brazil, where he would exchange them for cruzeiros, with which he would buy land and diamonds. Later he was to receive $800,000 for the same purpose. It was agreed that he was to receive half the profits of the venture, forty percent of which he was to pay to petitioner as a "finder's fee" (R. 61–65, 117–123).

On the following evening, Reames and his son met with the defendants at a restaurant, where the plan was further discussed and arrangements were made for the payment of Reames' expenses to Rio de Janeiro and for the delivery of the $200,000 in money orders, which were to be placed in the trunk of Reames' car (R. 70–72, 124–125). Petitioner was active in this discussion, and he instructed how the money orders should be wrapped and handled (R. 125).

The money orders were placed in the trunk of Reames' car the following afternoon by Rosa and a man named Savage. Rosa gave Reames the balance of his expense money and also gave him $15,200 in one hundred bills which Reames was to keep in Rio de Janeiro until Rosa could join him (R. 74–76, 89–91, 127).[2]

Reames testified that he arrived in Rio de Janeiro on January 6 and learned there, for the first time, that the money orders amounted to $160,000, rather than $200,000 (R. 74–75, 83). He made a deal for the purchase of 75,000 acres of land, paying down $40,000 in the money orders. The balance he turned over for conversion into Brazilian currency. When he encountered difficulties in the conversion, Rosa arrived. The difficulties led Reames to take samples of the money orders and bills to the American embassy. He thereafter talked with Rosa, who admitted that the money orders were stolen and said that the conspirators in New York would be upset, because they were supposed to cash the checks and return to the United States before the checks cleared (R. 88–98).

Robert Savage, who had assisted in placing the money orders in Reames' trunk, testified on behalf of the government that he had filled in the blanks

[2] It was stipulated that the bills were counterfeit (R. 108–109). It was also charged both substantively and in the conspiracy count that petitioner knowingly transported these counterfeit Federal Reserve notes. The trial court held that the evidence did not sufficiently sustain these charges and withdrew them (R. 771, 776).

on the money orders with the name of a fictitious payee and with the amounts. He did this in the kitchen of Rosa's home and overheard several conversations, in which petitioner participated, about the purchase of land with the money orders (R. 199–206). The first group of money orders was delivered to the trunk of Reames' car (R. 212). There was over $800,000 in the second set (R. 207). These were recovered, partly at Rosa's home and partly from a locker at the Miami airport (R. 170–176, 113–115).

ARGUMENT

1. Under section 2311 of title 18, "value" is defined as "the face, par, or market value, whichever is the greatest" of the securities in question, and the statute prohibits their transportation in interstate or foreign commerce. Here the evidence showed petitioner's participation (1) in a conspiracy to transport money orders having a "face" value of approximately one million dollars and (2) in the actual transportation of money orders having a "face" value of $160,000 from Miami, Florida, to Rio de Janeiro, Brazil. The fact that at the time of the theft these documents were mere forms—blank except for the facsimile signatures by two officers of the issuing organization—is immaterial. At the time they were transported in foreign commerce they were "forged, counterfeited or spurious representations" of securities having a value well in excess of $5,000.

2. Petitioner does not suggest what pre-trial motions he would have filed had he been afforded more time to prepare for trial, nor does he claim that he

was deprived of necessary witnesses or prevented from gathering evidence. It is suggested by his present counsel that a more thorough review of the statute might have enabled trial counsel to raise the point discussed in paragraph 1, *supra*. However, that point was, we submit, frivolous in light of the clear statutory language defining "value" to include "face" value. Since the granting of a continuance is a matter for the sound discretion of the trial court (*Avery* v. *Alabama*, 308 U.S. 444; *Joseph* v. *United States*, 321 F. 2d 710, 713 (C.A. 9), certiorari denied, 375 U.S. 977) and no prejudice is shown to have resulted here, the denial of the requested continuance presents no issue warranting review by this Court.

3. Petitioner did not request an instruction on the weight to be given to the testimony of an accomplice. The court instructed the jury to "carefully scrutinize the testimony given, the circumstances under which each witness has testified and every matter in evidence which tends to indicate whether the witness is worthy of belief" and to consider "any relation each witness may bear to either side of the case, the manner in which each witness might be affected, if they should be affected by the verdict." Immediately afterward the court inquired of counsel if any matter had been omitted, to which petitioner's counsel replied, "No, sir, we are satisfied, if your Honor please" (R. 799–800). The instructions given adequately covered the subject in the absence of any specific request. There was certainly no plain error.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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JULY 1965.